BLACKROCK

September 23, 2013

VIA ELECTRONIC MAIL

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Via Internet: http://www.sec.gov/rules/proposed.shtml

Re: Comments to Proposed Rule on Amendments to Regulation D, Form D and Rule 156 under the Securities Act; File Number S7-06-13

Dear Ms. Murphy:

BlackRock, Inc. ("BlackRock") is pleased to provide comments on the recently proposed rule on Amendments to Regulation D, Form D and Rule 156 under the Securities Act (the "Proposed Rule"). BlackRock is one of the world's leading asset management firms. We manage $3.857 trillion[1] on behalf of institutional and individual clients worldwide through a variety of equity, fixed income, cash management, alternative investment, real estate and advisory products. Our client base includes corporate, public and multi-employer pension plans, insurance companies, endowments, foundations, charities, corporations, official institutions, banks, and individuals around the world. BlackRock manages over $100 billion of alternative assets globally, including through offerings of private funds such as hedge funds, private equity funds, real estate funds and funds of funds. BlackRock distributes its private funds through affiliated and third-party broker-dealers and other intermediaries.

We support the Commission's final rule on the Elimination on the Prohibition Against General Solicitation and General Advertising in Rule 506 and rule 144A Offerings.[2] We agree that the final rule is in accordance with the intent of Congress and will further the objectives of the JOBS Act and bring both transparency and integrity to the private placement market. The principles-based approach for verifying accredited investor status is a commercial approach

[1] As of June 30, 2013.

[2] Release 33-9415.

and providing for three, non-exclusive, non-mandatory verification methods for natural persons provides helpful guidance to market participants.

We also agree with the objectives of the Commission to enhance its ability to evaluate the development of market practices in Rule 506 offerings and to address concerns that may arise in connection with permitting issuers to engage in general solicitations and general advertising. BlackRock believes that it is important for the Commission to balance its need for information with the burdens that are imposed on the capital raising process, and when undertaking changes in rules to do so in a comprehensive manner and as part of an overall review of related rules.

We are providing comments on certain aspects of the Proposed Rule. Specifically, we will address:

- Amendments to Form D and Form D filing procedures: We support most of the proposals for additional information, but are concerned about the confidentiality of our investors. We also caution not to create an unnecessary "speed bump" in the offering process.
- Changes to Rule 507: We support the Commission's goal to gather appropriate information from Form D but caution against unnecessarily punitive rules.
- Manner and Content Restrictions for Private Funds: Any changes to the rules surrounding the disclosure regime for private funds should be made in connection with a comprehensive review of the rules and not in an ad-hoc manner.
- Rule 510T: We don't believe that the mandatory filing of offering materials is necessary given the Commission's oversight and examination authority, but any required submissions should be made confidentially.
- Accredited Investor Definition: We support the current formulation of the accredited investor definition and support the Commission's ongoing review of the definition, as required under Dodd-Frank.

Amendments to Form D and Form D Filing Procedures

Proposed Amendments to Content Requirements of Form D

We support the Commission's goal of increased transparency in private offerings and the objectives of collecting additional and relevant information that supports the Commission's goals of better understanding the Rule 506 marketplace. However, we would encourage the Commission to reconsider the additional requirement of disclosing, in a public filing, persons that control an issuer. Publicly disclosing controlling persons could provide a disincentive to an investor making an early-stage investment in a private company, which would hamper the formation of capital. Furthermore, to the extent that such a requirement would capture a large investor in a private fund, we believe it would conflict with such an investor's expectations of privacy. Investors in private funds, who are generally passive with respect to the operations of private funds, don't expect to have their financial interests publicly disclosed. Indeed, we have found that many investors condition their investments in private

funds based on the confidentiality of their investment. Non-US investors have a choice of jurisdictions in which they invest, and where confidentiality is an important consideration they may avoid investing in companies, including private funds, that are subject to Form D filings.[3] The Commission acknowledged this confidentiality concern in 2008 when the filing of Form D moved from paper to electronic filing and 10% owners were no longer required to be disclosed.[4] To require that controlling ownership information be made public would be inconsistent with one of the primary reasons some companies, including private investment funds, choose to stay private – namely, to respect the privacy interests of their investors.

Proposal for Advance Filing of Form D

BlackRock supports the Commission's plans to collect information and evaluate the private placement marketplace. However, it is difficult to see how requiring the pre-filing of Form D supports this objective. Form D will provide the exact same information to the Commission if it is filed after the commencement of an offering as it would if it were filed earlier. A pre-filing requirement would create an additional and unnecessary step that would delay the capital formation process. Offerings are often time sensitive, and requiring a delay before initiating an offering so that information can be collected a few days earlier is not consistent with the objective of the JOBS Act to promote efficient access to private capital. Further, we expect many investment managers will have both Rule 506(b) and Rule 506(c) offerings for different funds, and having two filing regimes would unnecessarily complicate filing procedures and compliance. Therefore, we would encourage the Commission to retain the current requirement to file Form D within fifteen days after first sale of securities.[5]

Changes to Rule 507

As we support the Commission's goal of obtaining additional information about the Rule 506 offering market, we agree that proper incentives should be in place for issuers to provide accurate and timely information. However, proposed Rule 507(b) is unduly punitive and fails to balance the needs of the Commission against the impact this approach would have on capital formation. Although the Commission has proposed a one-time 30 day grace period, it would be too easy for ministerial or inadvertent errors to result in the loss of an important exemption for future offerings. In a large, institutional fund complex where there are multiple affiliated funds, this would be an extreme and unfair result.

We believe that the Commission should retain the discretion to sanction an issuer for failing to comply with applicable rules as opposed to providing for the automatic loss of an

[3] Similarly, it might cause a larger investor to redeem from a fund, resulting in a knock-on effect as investors leave and previously smaller investors then hold larger percentages of the fund.

[4] Release 33-8891.

[5] This would also help address situations where an issuer finds that it has potentially engaged in an inadvertent general solicitation (where public statements are made without the intent to engage in a general solicitation or general advertisement). This is of particular importance given the potential consequences of a failure to file any required Form D if the Commission were to proceed with the proposed amendments to Rule 507 of Regulation D.

important securities law exemption. The specific facts and circumstances should be important considerations in determining whether an issuer and its affiliates would lose the ability to rely on Regulation D. The Commission's power to penalize issuers for failing to comply with the requirements of Form D will continue to serve as meaningful incentive for issuers to comply, while providing the Commission with the discretion to choose the circumstances where it is appropriate to take action. We would suggest that the Commission retain this kind of discretionary regime, and include compliance with Regulation D in its ongoing study and evaluation of the development of the Regulation D marketplace. The Commission could then determine after a period of review whether further changes are needed.

Request for Comment on Manner and Content Restrictions for Private Funds

The Commission has requested comment on whether content restrictions should be adopted in the context of Rule 506(c) offerings. We were pleased to see that the Commission determined not to mandate additional, specific requirements for private fund advertising in the final rules. As we noted in our prior comment letters[6], there are numerous protections under existing regulatory regimes for distributing private funds, including investor qualification requirements, the anti-fraud provisions of the federal securities laws and applicable FINRA rules and regulations related to the preparation of marketing materials. Together, they form a robust, mature investor protection framework that will continue to be effective once general solicitations by private funds are permitted. Most significantly, we believe that the requirement that only sophisticated institutions and individuals may ultimately purchase interests in these funds – regardless of who is exposed to information about a specific fund or advertising materials – eliminates the risk that investors could be harmed as a result of a manager engaging in general advertising or solicitation.

We understand that the Commission is undertaking a comprehensive review of rules that apply to investment advisers, including advisers to private funds. We believe some of the Commission's proposals should be reconsidered in the context of such larger rulemaking initiatives and not be implemented as part of this rulemaking. For example, the Commission has proposed that Rule 156 apply to private funds. Rule 156 is an interpretive rule that provides guidance regarding whether sales material used by registered investment companies could be viewed as materially misleading. BlackRock supports robust anti-fraud rules, but the application of Rule 156 to private funds should be proposed in the context of a more holistic review of advertising rules applicable to all investment companies, including private funds. Similarly, the Commission has proposed certain mandatory legends in the context of 506(c) offerings. BlackRock supports proper disclosures in the context of Rule 506 offerings and agrees that offering documents should be properly legended. However, with respect to Rule 506 offerings undertaken by private funds, the Commission should review any additional disclosure requirements, including legends, as part of a comprehensive review of the

[6] See BlackRock letters, May 2, 2012 and October 5, 2012.

disclosure regime applicable to investment companies. Importantly, such a review should take into account the differences between retail funds and private funds managed for sophisticated investors.

Rule 510 T – Temporary Rule for Mandatory Submissions of Written General Solicitation Materials

The Commission has proposed a temporary, two-year rule to collect general solicitation materials. We believe the collection of all general solicitation materials is unnecessary given SEC's oversight and examination authority over both broker-dealers and investment advisers. Again, as a question of balancing the Commission's need for information and the burden for issuers, the filing of all general solicitation material given the other means for the Commission to access this information seems to tilt against the imposition of this proposal.

If the Commission determines that it will collect general solicitation materials, we agree these materials should not be publicly available and should instead remain confidential. We believe most solicitation materials will not be published in the mass media, and requiring information that might otherwise only be provided to a limited audience to be disseminated to the world at large could result in the disclosure of sensitive and confidential information, harming an issuer's competitive position. Further, submission of materials should not be made a pre-condition to reliance on Rule 506. If the goal is to collect information about the Rule 506 market, we would suggest the timing could be a short period of time after first use, allowing for an orderly filing process.

The Commission also asked about who should have the obligation to submit materials. The Commission should clarify that only issuers and their affiliates are responsible for making the filings under Rule 510T. Placement agents and other third parties that might prepare materials (that are general solicitation materials but which may not otherwise be made publicly available) should have a separate responsibility to make these filings. Issuers should have deemed to satisfy their filing requirement by requiring contractually that a third party whom they have engaged has agreed to file these materials.

Request for Comment on Accredited Investor Definition

Several commentators suggested that the definition for Accredited Investor should be reviewed. Section 415 of the Dodd-Frank Act requires the GAO complete a study of the definition by July 20, 2013. Section 413(b) of the Dodd-Frank Act requires the Commission to review the accredited investor definition as it relates to natural persons by the fourth anniversary of the Dodd-Frank Act and every four years thereafter. The Commission is looking to coordinate its review with the GAO Study. BlackRock supports the periodic review of accredited investor definition, and we also support the net worth and earnings tests as

proxies for sophistication. The accredited investor definition should be a bright line test that is straightforward to apply and diligence.[7]

Conclusion

We thank the Commission for providing BlackRock the opportunity to provide comments and suggestions regarding the Proposed Rule. In connection with the Commission's mission to both encourage the formation of capital while supporting investor protection, we would encourage the Commission to:

- Tailor any new requirements to reflect the types of investors participating in a particular offering;
- Allow for more discretion to make a determination whether to seek sanctions or punish an issuer or offering participant and not provide for the automatic loss of important securities law exemptions;
- Review the cost-benefit of any new rules to the markets; and
- Consider any new requirements in light of any larger rule-making initiatives in a comprehensive manner.

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Please contact the undersigned if you have any questions or comments regarding BlackRock's views.

Sincerely,

Barbara Novick
Vice Chairman

[7] The ability to effectively diligence these requirements takes on increased importance in light of the accredited investor verification requirements of Section 506(c) offerings.